

1 HONORABLE RONALD B. LEIGHTON  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

INNOVATOR CORPORATION, a  
Washington corporation,

Case No. C05-5249 RBL

Plaintiff,

ORDER

v.

MICROPATENT L.L.C., a Delaware Limited  
Liability Company,

Defendant.

THIS MATTER comes on before the above-entitled Court upon Defendant's Motion to Dismiss  
pursuant to Fed.R.Civ.P. 12 (b)(6).

Having considered the entirety of the records and file herein, the Court rules as follows:

This is a breach of contract case wherein plaintiff (seller) alleges defendant (buyer) breached the Asset Purchase Agreement for the sale of plaintiff's business to defendant. As part of the Agreement, defendant was to continue to develop two projects the plaintiff was working on prior to the sale. If the projects were developed and sold, both plaintiff and defendant would then share in the proceeds from the sale of the two projects. Plaintiff alleges that the Agreement was breached when defendant failed to use its contractually required "best efforts" to develop the two projects plaintiff had ongoing, and was breached when defendant was acquired after the sale by a third company who was a potential customer for the two projects in development. This lawsuit is in its infancy, the defendant has not answered the complaint, and no discovery has yet occurred.

1 Motions to dismiss are viewed with disfavor, *Gilligan v. James Develop. Corp.*, 108 F.3d 246, 249  
2 (9<sup>th</sup> Cir. 1997), and are proper only in extraordinary circumstances. *United States v. Redwood City*, 640 F.2d  
3 963, 966 (9<sup>th</sup> Cir. 1981). The Court “take[s] all allegations of material fact as true and construe[s] them in the  
4 light most favorable to the nonmoving party. A complaint should not be dismissed unless a plaintiff could  
5 prove no set of facts in support of his claim that would entitle him to relief.” *Parks School of Business, Inc.,*  
6 *v. Symington*, 51 F.3d 1480, 1484 (9<sup>th</sup> Cir. 1995)(citations omitted).

7 The complaint, read as a whole, states a claim for breach of contract. The viability of the claim depends  
8 upon what information is learned in discovery. It is therefore

9 **ORDERED** that defendant’s Motion to Dismiss [Dkt. #8] is **DENIED**. It is further  
10 **ORDERED** that plaintiff’s request to strike Exhibit A to the Ritter Declaration is **GRANTED**. The  
11 document was not considered by the Court in ruling on the Motion to Dismiss.

12 The Clerk shall send uncertified copies of this order to all counsel of record, and to any party appearing  
13 pro se.

14 Dated this 25<sup>th</sup> day of July, 2005.

15   
16 Ronald B. Leighton  
17 RONALD B. LEIGHTON  
18 UNITED STATES DISTRICT JUDGE